

CANADIAN INTERNET REGISTRATION AUTHORITY**DOMAIN NAME DISPUTE RESOLUTION POLICY COMPLAINT**

Disputed Domain Name kanadaegitimmerkezi.ca (the "Domain Name")
First Complainant: Canadian Education Centre Network
Second Complainant: CEC Turkey-KANADA EGITIM MERKEZI
Registrant: Mr. Ismail Ince
Registrar: Netfirms, Inc.
Panel: Hugues G. Richard (Chair of the Panel), David Lametti and Eric Macramalla (Panellists)
Service Provider: Resolution Canada Inc.

DECISION**THE PARTIES**

The First Complainant is the Canadian Education Centre Network, having its place of business at 400 - 889 West Pender Street, Vancouver, British Columbia, Canada, V6C 3B2.

The Second Complainant is CEC Turkey-KANADA EGITIM MERKEZI, having its place of business at Miralay Sefik Bey Sok. 5/11 Gumussuyu- Taksim, Istanbul / Turkey.

The Registrant is Mr. Ismail Ince, residing at 701-25 Vincent D'indy, Montréal, Québec, Canada, H2V 2S8.

PROCEDURAL HISTORY

Resolution Canada Inc. is a service provider recognized by the Canadian Internet Registration Authority, pursuant to the Domain Name Dispute Resolution Policy (v 1.2) (the "Policy") and Rules (v 1.3) (the "Rules") of the Canadian Internet Registration Authority.

On June 2, 2009, the Complainants filed a complaint with Resolution Canada seeking an order directing that the registration of the Domain Name be transferred from the Registrant to the First Complainant.

Resolution Canada forwarded notice of the Complaint to the Registrant by e-mail dated June 11, 2009, in accordance with Rules 2.1. Resolution Canada set the date of commencement of proceedings to be June 11, 2009 and informed the Registrant of its right to file a Response to the Complaint within 20 days.

On July 7, 2009, Resolution Canada announced the selection of the three Panellists. The Registrant responded to the Complaint with his Response and an amendment to his Response, which were received and accepted by the Panel on

July 13, 2009. The Complainants then submitted a Replication to the Registrant's Response, which was received and accepted by the Panel on July 14, 2009.

CANADIAN PRESENCE REQUIREMENTS

Pursuant to 1.4 of the Policy, a complaint is eligible for arbitration only if the person submitting it satisfies the Canadian Presence Requirements (the "CPR") at the time of submission. The CPR state that to be permitted to apply for the registration of, and to hold and maintain the registration of, a .ca domain name, the applicant (i.e. the Complainants) must meet at least one of the criteria listed as establishing a Canadian presence.

From the evidence submitted, it appears that the Second Complainant, CEC Turkey-KANADA EGITIM MERKEZI, does not meet any of the CPR because it is a Turkish organisation operating solely in Turkey that has no legal representative in Canada. The First Complainant, the Canadian Education Centre Network, may satisfy the CPR.

The Complainants allege that the First Complainant is a "private, independent non-profit company" operating in Canada. A "corporation under the laws of Canada or any province or territory of Canada" satisfies the CPR (paragraph 2(d)). However, the Complainants do not explain the nature of the First Complainant's incorporation, nor do they name the applicable federal, provincial, or territorial legislation under which the First Complainant is incorporated.

Therefore, it remains unclear as to how the First Complainant satisfies the CPR. However, as will become apparent below, this question is not determinative of the issues before the Panel. Therefore, for the purposes of proceeding to the merits of the Complaint and Response, the Panel will assume that the First Complainant satisfies the CPR and is therefore eligible to hold the registration of a .ca domain name.

FACTS

The following facts are derived from the Complainants' submissions and are accepted by the Panel¹:

1. The First Complainant is a Canadian organisation operating in many countries. Its purpose is to promote and market Canada as a study destination for international students.
2. As part of its promotional activities, the First Complainant hosts Canadian Educational Fairs in various countries which bring potential students in direct contact with Canadian educational institutions.
3. The First Complainant has a trade-mark with the Canadian Intellectual Property Office (TMA663219), which was registered on April 25, 2006. The trade-mark consists of a design mark, as well as the descriptive reference "CEC NETWORK RÉSEAU des CÉC".

¹ The Panel has not included the facts pertaining to the Second Complainant because it does not satisfy the CPR.

4. On April 30, 2009, the First Complainant applied to register a trade-mark consisting of a design mark bearing the descriptive reference "CEC Network Kanada Eđitim Merkezi" with the Turkish Patent Institute.
5. The Complainants have used the marks "CEC Network" and "Kanada Eđitim Merkezi" in advertisements and newspaper articles since at least 2002. Both marks always appeared together. The latter mark, "Kanada Eđitim Merkezi", has been used exclusively in Turkey.
6. The expression "Kanada Eđitim Merkezi" is the Turkish translation of "Canadian Education Centre".

The following facts are derived from the Registrant's submissions and are accepted by the Panel:

1. The Registrant is a Canadian citizen who operates a Turkish company that was incorporated on June 22, 2009 under the name of "KAN ADA KULTUR VE EGITIM MERKEZI LIMITED DANISMANLIK SIRKETI".
2. The Registrant's company offers similar services to those provided by the Complainants, except the scope of its services is limited to Turkey.
3. The Registrant registered the Domain Name on November 11, 2008.

REMEDY SOUGHT

In their Complaint, the Complainants seek the following order:

THAT the Domain Name be transferred to the First Complainant in accordance with paragraph 4 of the Policy.

THE POLICY

The purpose of the Policy as stated in its paragraph 1.1 is to provide a forum in which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly.

To succeed, the Complainants must prove, on a balance of probabilities, that (paragraph 4.1 of the Policy):

1. The Complainants' Mark meets the definition of a "Mark" in paragraph 3.2 of the Policy
2. the Complainants had "Rights" (as "Rights" are defined in paragraph 3.3 of the Policy) in the Complainants' Mark,
3. the Domain Name is "Confusingly Similar" to the Complainants' Mark as the concept of "Confusingly Similar" is defined in paragraph 3.4 of the Policy; and
4. the Registrant has registered the domain name in "bad faith" in accordance with the definition of "bad faith" contained in paragraph 3.7 of the Policy.

Moreover, the Complainants must provide "some evidence" of the final, fifth criterion, namely that the Registrant has no "legitimate interest" in the Domain Name as the concept of "legitimate interest" is defined in paragraph 3.6 of the Policy.

If the Complainants are unable to establish, on the balance of probabilities, criteria 1, 2, 3 and 4, and provide some evidence of criterion 5, the Complaint will fail.

MARK

The Policy defines a “Mark” as one of the following (paragraph 3.2):

- (a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;
- (b) a certification mark, including the word elements of a design mark, that has been used in Canada by a person or the person’s predecessor in title, for the purpose of distinguishing wares or services that are of a defined standard; or
- (c) a trade-mark, including the word elements of a design mark, that is registered in CIPO;

For the purposes of the Policy and pursuant to paragraph 3.5, a mark is deemed to be in “use” or “used” in association with:

- (b) services, if the Mark is used or displayed in the performance or advertising of those services; or
- (c) a business, if the Mark is displayed in the operating, advertising or promoting of the business;

In order for the Domain Name “KANADA EGITIM MERKEZI” to meet the requirements of a Mark pursuant to paragraph 3.2(a) or (b), the trade-mark, trade name, or certification mark must have been used in Canada to distinguish the Complainants’ wares or services from those offered by another. As is made abundantly clear by the evidence annexed in the Complaint, and from the Replication, at no time was “KANADA EGITIM MERKEZI” used in Canada. The Complainants submit much evidence showing use of “KANADA EGITIM MERKEZI” in Turkey, but never allege or prove the same for Canada. In light of these facts, “KANADA EGITIM MERKEZI” cannot qualify as a Mark as per 3.2(a) or (b) of the Policy.

The First Complainant does, however, possess a registered trade-mark with CIPO. This trade-mark, including its word elements “CEC NETWORK RÉSEAU des CÉC”, is a Mark as per paragraph 3.2(c) of the Policy (the “Complainants’ Mark”).

RIGHTS

The Policy states that the Complainants have “Rights” in the Complainants’ Mark if (paragraph 3.3(b)):

in the case of paragraph 3.2(c), the Mark is registered in CIPO in the name of that person, that person’s predecessor in title or a licensor of that person;

The First Complainant satisfies the Panel that its Mark is registered in CIPO as belonging to the Canadian Education Centre Network. Therefore, the First Complainant has “Rights” in the Mark.

CONFUSINGLY SIMILAR

A Domain Name will be “Confusingly Similar” to the Complainants’ Mark if the Domain Name so nearly resembles the Complainants’ Mark in appearance, sound or the ideas suggested by the Complainants’ Mark as to be likely to be mistaken for the Complainants’ Mark (paragraph 3.4 of the Policy).

In these proceedings, “domain name” means the domain name excluding the “dot-ca” suffix (paragraph 1.2 of the Policy). Therefore, the Domain Name before the Panel is *kanadaegitimmercezi*. For ease of reference, and because both parties agree that the Domain Name consists of three generic Turkish words, the Panel will consider the Domain Name to be “KANADA EGITIM MERKEZI” for the purposes of comparison.

In both their Complaint and Replication, the Complainants allege that “KANADA EGITIM MERKEZI” is a rough Turkish translation (“Canada Education Centre”) of the Complainants’ Mark. They allege that they have a common law trade-mark in “KANADA EGITIM MERKEZI” that dates from at least 2002, and thus predates the registration of the disputed Domain Name. The Complainants’ Mark being the English translation of the Domain Name, the Domain Name is necessarily confusingly similar because “any internet user, who is looking for information on this center, shall assume that the web-site belongs to the Complainants due to the fact that the web site and its content [sic]”.

One can easily conclude that the overarching purpose of the CIRA’s Policy and Rules is to prevent the bad faith registration of .ca domain names that infringe upon a registered or common law mark in Canada. This is made amply clear by the Canadian Presence Requirements, which require a complainant to be either a Canadian citizen or a Canadian organisation. This is further illustrated by the Policy, which requires the mark in question to be either used in Canada or registered in Canada. Given these realities, the Panel believes that the appropriate frame of reference for the “Confusingly Similar” criteria is Canadian. Thus stated, the central question becomes is the Domain Name and the Complainants’ Mark “Confusingly Similar” in Canada?

The Panel is inclined to find no such confusion in Canada. The Domain Name (“KANADA EGITIM MERKEZI”) does not so nearly resemble the Complainants’

Mark (“CEC NETWORK RÉSEAU des CÉC”) in appearance, sound or the ideas suggested by the Complainants’ Mark as to be likely mistaken for the Complainants’ Mark, even if they are the translations of each other. It is difficult to imagine an internet user in Canada confusing the two, nor is any evidence submitted to support such a conclusion. In fact, the expression “KANADA EGITIM MERKEZI” was not even being used in Canada before the Registrant registered it as the Domain Name. Therefore, there could not have been any confusing similarity between this expression and the Domain Name in Canada.

The Complainants allege any internet user in Turkey would confuse the Complainants’ Mark with the Domain Name. There is no need to consider this allegation, given the Panel’s conclusion that a Canadian frame of reference is required when evaluating the “Confusingly Similar” criterion. Yet, still, the Panel does not feel that the Complainants have established this on the balance of probabilities. Credible doubts plague this allegation. Among these is the fact that from 2001 until the registration of the Domain Name in 2008, the Complainants did not use the Domain Name nor do they allege that they were prevented from doing so. In fact, the Complainants’ own evidence shows that they used www.studycanada.ca/turkey in advertisements in 2003 and 2004, long before the Domain Name was ever disputed or registered. It is therefore safe to conclude that in their promotional activities conducted over a period of at least seven years, the Complainants provided prospective students with, and built their reputation under, www.studycanada.ca/turkey. This leads the Panel to conclude that it is not likely, on a balance of probabilities, that even an internet user in Turkey would confuse the Complainants’ Mark with the Domain Name.

The Panel is not satisfied that the Domain Name is confusingly similar to Complainants’ Mark.

DECISION

Given that the Panel has concluded that the Domain Name is not confusingly similar to the Complainants’ Mark, it is not necessary to deal with the bad faith and legitimate interest criteria. The Complainants have not proven, on the balance of probabilities, the requirements of paragraph 4.1 of the Policy. The Complaint is therefore rejected.

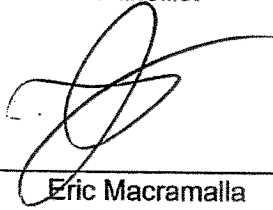
Dated: July 21, 2009.



Hugues G. Richard
Chairman



David Lametti
Panellist



Eric Macramalla
Panellist